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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,095	12/01/2005	Marianne Hofmann	8312-605.1113.6	1462
30565 7590 11/14/2008 WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP 111 MONUMENT CIRCLE, SUITE 3700 INDIANAPOLIS, IN 46204-5137				
EXAMINER				
HOEY, ALISSA L				
ART UNIT		PAPER NUMBER		
3765				
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11/14/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/559,095

Applicant(s)

HOFMANN, MARIANNE

Examiner

Alissa L. Hoey

Art Unit

3765

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-28 and 31-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-28 and 31-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

This is in response to amendment received on 08/04/08. Claims 22, 39 and 40 were amended, claims 1-21, 29-30 and 41 were cancelled. Claims 22-28 and 31-40 are examined below.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 22-24, 26-28, 32 and 35-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Wood et al. (GB 2 078 491 A).

Wood et al. teaches the following:

22. (New) A hood (1), in particular for a clothing item for protective and military purposes, such as an NBC protective suit, said hood comprising:
a peripheral elastic hem (5, 5a) constructed and arranged to form a face opening (see figure 1), the face opening being provided for receiving a respirator and the hem being constructed and arranged in abutting the respirator in the use state (page 1, lines 67-75), wherein the side of hem that faces into the face opening (5) is provided with a plurality of circumferential sealing elements (5a) which are durably conjoined with the hem and are in the form of elastofibers for closeout abutment against and around the respirator (page 1, lines 67-75), wherein the individual sealing elements are in

substantially parallel arrangement with each other (elastic inserts (5a) arranged along perimeter (5) would provide the elastic inserts (5a) to be in substantially parallel arrangement to each other).

23. (New) The hood according to claim 22, wherein the sealing elements (5a) about the respirator essentially linearly (see figures 1 and 2: page 1, lines 67-75).

24. (New) The hood according to claim 22, wherein the sealing elements (5a) project or protrude from the hem (figure 2: page 1, lines 67-75).

26. (New) The hood according to claim 22, wherein the sealing elements (5a) are secured to the hem by one of stitching, interweaving, adhering, stapling or welding.

27. (New) The hood according to claim 22, wherein the sealing elements (5a) are each configured as a sealing ring, as a sealing lip or as a sealing protrusion (page 1, lines 67-75).

28. (New) The hood according to claim 22, wherein the sealing elements (5a) are thread, ligament-, string- or strip- shaped or webbed- or honeycomb-shaped (page 1, lines 67-75).

32. (New) The hood according to claim 22, wherein the elasticity of the sealing elements (5a) corresponds at least essentially to the elasticity of the hem.

35. (New) The hood according to claim 22, wherein the hood (1) including the face opening (5) comprises, on the side portion of face opening, a fastener (8, 9).

36. (New) The hood according to claim 22, wherein the hood (1) is fully or partially lined (7) on its inside surface with an inside material, the inside material comprising a material selected from the group consisting of: (i) an adsorption-capable

material on the basis of activated carbon, and (ii) a water-vapor-pervious, but gas-impervious barrier layer preventing or retarding the passage of harmful gases and liquids (page 1, lines 58-65).

37. (New) A clothing item capable of being used for protective and/or military purposes, such as an NBC protective suit or the like, comprising a hood (1) as defined in claim 22 (page 1, lines 5-10).

38. (New) The clothing item according to claim 37, wherein the clothing item is fully or partially lined (7) on its inside surface with an inside material, the inside material comprising a material selected from the group consisting of: (i) an adsorption-capable material on the basis of activated carbon, and (ii) a water-vapor-pervious, but gas-impervious barrier layer preventing or retarding the passage of harmful gases and liquids (page 1, lines 58-65).

39. (New) A clothing item, in particular for protective and military purposes, such as an NBC protective suit or the like, said clothing item comprising:
at least one opening (5) for a body part, such as a hand, arm, foot, leg or head, having a peripheral elastic hem (5a) constructed and arranged to form this opening, the opening being provided for receiving a further clothing item or an equipment article (column 1, lines 65-75) and the hem being constructed and arranged in abutting relation to the further clothing item or the equipment article in the use state,
wherein one side of said hem faces the further clothing item or the equipment article and faces into the opening is provided with a plurality of peripheral sealing elements (5a) which are conjoined with the hem and

are in the form of elastofibers for abutment against and around the further clothing item or equipment article (figures 1 and 2: page 1, lines 68-75), wherein the individual sealing elements are in substantially parallel arrangement with each other (elastic inserts (5a) arranged along perimeter (5) would provide the elastic inserts (5a) to be in substantially parallel arrangement to each other).

40. (New) A method for closing out the transition between a portion of a clothing item on the one hand and a further clothing item or equipment article on the other hand by using an elastic hem, comprising the step of:
forming an elastic hem that faces the further clothing item or the equipment article, providing a plurality of sealing elements in the form of elastofibers; and conjoining said plurality of sealing elements with said hem for closeout abutment of the further clothing item or equipment article (figures 1 and 2 page 1, lines 55-75).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 25, 31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood et al.

Wood et al. teaches a garment as described above in claim 22. However, Wood et al. fails to specifically teach the dimension the sealing elements project from the hem, the sealing elements forming a honeycomb-like construction, the sealing elements

thickness in comparison to the hem, the extensibility of the sealing elements and the modulus of elasticity in stretching of the sealing elements.

In regard to claim 25, with respect to the sealing elements projecting or protruding from the hem by not less than 0.25 mm, preferably not less than 0.4 mm.

With respect to the sealing elements projecting from the hem by .4mm and .25mm. The specification contains no disclosure of either the critical nature of the claimed dimensions of any unexpected results arising therefrom, and that as such the dimensions are arbitrary and therefore obvious. Such unsupported cannot be a basis for patentability, since where patentability is said to be based upon the particular dimensions or another variable in the claim, the Applicant must show that the .25mm-.4mm protrusion of the sealing element from the hem is critical. *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal dimension for a particular application.

In regard to claim 31, with respect to the cross-sectional thickness of the sealing elements being not less than 1/4 of the cross-sectional thickness of the hem. The specification contains no disclosure of either the critical nature of the claimed dimensions of any unexpected results arising therefrom, and that as such the dimensions are arbitrary and therefore obvious. Such unsupported cannot be a basis for patentability, since where patentability is said to be based upon the particular dimensions or another variable in the claim, the Applicant must show that the thickness of the sealing element being not less than 1/4 of the cross-sectional thickness of the

hem. *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal thickness for the sealing element so that a good seal is achieved between the garment and the respirator.

In regard to claim 33, with respect to the sealing elements having a relative elastic extensibility, based on their original length, of not less than 30 %. The specification contains no disclosure of either the critical nature of the claimed extensibility dimensions of any unexpected results arising therefrom, and that as such the extensibility dimensions are arbitrary and therefore obvious. Such unsupported cannot be a basis for patentability, since where patentability is said to be based upon the particular extensibility dimensions or another variable in the claim, the Applicant must show that the sealing elements having elastic extensibility of not less than 30%. *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal extensibility for a particular application.

In regard to claim 34, with respect to the material of which the sealing elements consist has, at 25 °C, a modulus of elasticity in stretching in the range of from 5.105 N.m² to 9.10 6 N.m². The specification contains no disclosure of either the critical nature of the claimed extensibility dimensions of any unexpected results arising therefrom, and that as such the extensibility dimensions are arbitrary and therefore obvious. Such unsupported cannot be a basis for patentability, since where patentability is said to be based upon the particular extensibility dimensions or another variable in

the claim, the Applicant must show that the sealing elements are made from a material that has a modulus of elasticity from 5.105Nm² to 9.10 6 N.m². *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal modulus of elasticity for the sealing elements to create a good sealing effect.

Response to Arguments

5. Applicant's arguments filed 08/04/08 have been fully considered but they are not persuasive.

I) Applicant argues that Wood fails to teach a circumferential elastic hem to form a face opening.

Examiner disagrees since Wood teaches perimeter (5) with elastic inserts (5a), which are seen in figure 1. The hem as illustrated contains the elasticized inserts which would inherently be situated along the perimeter (5).

II) Applicant argues that Wood fails to teach that the elastic inserts are in fact sealing elements.

Examiner notes that on page 1 of the Wood specification, lines 67-75, Wood teaches the perimeter (5) with elasticized inserts (5a) providing a close fit between the garment and the wearer's face mask. Therefore, Wood teaches that the elasticized inserts are providing a sealing effect.

III) Applicant argues that Wood fails to teach the segments being circumferential.

Examiner disagrees, since the perimeter (5) has a circumference and the elasticized inserts are provided along the perimeter to provide a close fit between the

garment and the face mask. If the perimeter contains elasticized inserts how else could they be provided around the perimeter to provide a close fit between the garment opening and mask? It is inherent that the inserts would be positioned along the perimeter in a circumferential manner, substantially parallel to each other.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3765

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765